

EXHIBIT D

Steven Stiglitz

From: Eve Wagner [ewagner@swattys.com]
Sent: Friday, November 16, 2012 10:12 AM
To: Steven Stiglitz
Cc: Anthony Sbardellati
Subject: Penske

Dear Steve:

This responds to your request that the parties agree between themselves to extend the discovery deadline by 2 to 3 months. This also responds to your email in which you provided an updated version of the joint stipulation with respect to Penske's proposed motion to compel.

As we read Judge Tucker's orders in this case, discovery is simply over, right now, and both sides are left with the record as it stood on November 9. That was not where either side hoped to be when the parties agreed to try and extend the discovery cutoff. But it is where the court has left us. We do not see how the parties can simply agree between themselves to extend a discovery period that the court says has ended. We also do not see how motions to compel would be timely at this point.

If Penske intends to go forward and attempt a motion to compel, then we will work with you on a joint stipulation, but you should be advised that we will assert to the court that the motion is untimely; that if it is considered on the merits, it should be denied; and that if the discovery items open as of November 9 are to be completed, then that obligation should apply to both parties. Please let us know promptly if Penske actually intends to attempt a motion to compel under these circumstances, so that we can work out a schedule and get you our piece of the joint submission.

Regards,

Eve

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